ORDER:

1. Challenging the order dated 19.03.2001 in I.T.I.D.No. (C) 16 of 1999 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam, the present Writ Petition is filed.

2 . It is the case of the petitioners that the 2nd respondent was engaged as an auto driver by them from 1991 to 1996 on account of non-public funds, which is constituted from contributions of the concerned officers, to serve the needs of hostel mates of Russian hostel and the engagement has nothing to do with the administration of Navy. As the inmates of the hostel left in 1996, two autos, including the auto driven by the second respondent, were put to auction and the same were purchased by the respective drivers. After three years subsequent to disengagement, the second respondent filed I.T.I.D. No. 16 of 1999 on the file of the first respondent claiming that his disengagement amounts to retrenchment and so, the same is violative of Section 25F of the Industrial Disputes Act, and an award was passed by the first respondent directing to reinstate him with back wages and continuity of service. Hence, the Writ Petition.

3. The second respondent sought to sustain the order passed by the Tribunal and prayed dismissal of the Writ Petition.

4. The learned counsel for the petitioners contended that the second respondent was appointed as auto driver temporarily for a particular purpose and he was being paid honorarium; there is no relationship of master-servant between the petitioners and the second respondent, and without there being any evidence, the Tribunal gave a perverse finding. Therefore, he prayed to allow the Writ Petition.

5. The learned counsel for the respondent no.2 contended that the findings of the Tribunal can not be said to be perverse since they are based upon some evidence; this Court, while exercising power of judicial review, can not re-appreciate the evidence; the order under

challenge does not suffer from any infirmities so as to call for interference from this Court.

6 . Judicial review is a fundamental mechanism for keeping the Tribunals/public authorities within due bounds and for upholding the rule of law. Instead of substituting its own decision for that of some other body as happens when on appeal, the Court of review is concerned only with a question whether the act or order under attack should be allowed to stand or not. It is well settled that while exercising judicial review, the Court is more concerned with the decision making process than the merits of the decision itself. While examining and scrutinizing the decision making process, it becomes inevitable to also appreciate the facts of the given case as otherwise the decision can not be tested under the grounds of illegality, irrationality or procedural impropriety.

7 . The second respondent herein was engaged as an auto driver from non public funds in the month of February, 1991 for transporting the hostel mates of Russian hostel. The said engagement was nothing to do with the administration of the Navy. The inmates of the hostel left in the year 1996 on completion of their work. The autos, which were purchased under non-public funds, were put to auction and the second respondent and another R.Trinadha Rao purchased their respective autos driven by them and thereafter, they were not engaged any further.

8. Having approached the Tribunal, it is for the workman to establish that he was appointed in a regular vacancy as an auto driver. If a workman is appointed in a regular vacancy, his services can not be terminated except by following the procedure laid down under Section 25.F of the Industrial Disputes Act, 1947. Therefore, the primary burden is on the workman to establish that he was appointed in a regular vacancy.

9 . The case of the second respondent-workman is that he was appointed in February, 1991 on a monthly salary of Rs.300/- and his services were terminated in November, 1996. The evidence of

workman would go to show that he worked in the Russian hostel; he purchased the auto at the time of his removal from service. On the other hand, the specific case of the petitioners herein is that the Eastern Naval Command does not control the non-public funds; there are 13 employees working in the hostels and only two civilians were working in the hostel on part-time basis. The specific stand of the respondents is that since the second respondent was appointed as auto driver temporarily for a particular purpose and that after purpose is over, the autos were sold and he himself purchased the auto driven by him, and if really the second respondent was engaged as an auto driver by the Eastern Naval Command, then there is no question of selling the auto after the purpose is over.

10. It is an admitted fact that the second respondent was not appointed through a regular constituted selection committee. Except the oral testimony of workman and the temporary orders issued in his favour, there is no other material to show that the second respondent was appointed in a regular vacancy after due process of law. There is documentary evidence as well as the admission made by the second respondent that he purchased the auto in the year 1996 for a sum of Rs.20,000/-. On the other hand, there is no other evidence except the oral testimony of second respondent, that he used to serve as auto driver in the Naval base on monthly salary. He did not say through which process he was appointed as auto driver nor who is the appointing authority. Though he stated that the appointment order was given by Lieutenant Nair, but the same was not produced.

11. The only basis for the Tribunal to arrive at the conclusion is the evidence of M.W.3. But, the evidence of M.W.3 is not helpful to the case of the second respondent. The impugned order does not indicate any reasons at all to arrive at the conclusion that the second respondent herein is a workman within the meaning of Section 2 (oo) of the Industrial Disputes Act, 1947 and he was appointed by a duly constituted selection committee in a regular vacancy. When the findings are based upon no evidence, then they are perverse findings. No doubt, it is true that while exercising powers of judicial

review, the Court can not embark upon to appreciate the evidence and arrive at a conclusion of its own on the sufficiency of the evidence or on the correctness of the conclusion, which is based on such evidence. But, the findings must be based upon some evidence. Such evidence is lacking in this case. When the second respondent was appointed for a particular purpose to carry the inmates of the hostel to the work spot and when that particular purpose is admittedly over, question of continuing the second respondent does not arise. Perhaps, that is the reason why the second respondent himself did not challenge for about three years, when he was disengaged after purpose was over. More over, he himself purchased the auto and was running the auto for private purposes. If really the second respondent was appointed in a regular vacancy and terminated illegally, he would have approached the Tribunal well within reasonable time. There is a delay of three years in approaching the Tribunal. But, the Tribunal basing upon a decision of the Apex Court, came to the conclusion that the delay is not a ground for denial of back wages. There is no dispute that delay by itself is not a ground for rejecting the case of the workman. But, at the same time, it must be explained properly. No such explanation is forthcoming in the pleadings nor explained by the second respondent when he was examined as a witness. All these factors do indicate that the second respondent indulged in speculation and he was successful in the game of speculation. It is a case where the findings of the Tribunal are not based upon any evidence. Therefore, they have to be set aside.

12. In the result, the Writ Petition is allowed. The award dated 19.03.2001 passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.T.I.d. No.16 of 1999 is set aside. No costs.

(K.C.Bhanu, J.)

06.09.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on

Day, the day of September, 2005.

…Registrar

THE HONB'E SRI JUSTICE K.C.BHANU

WRIT PETITION No. 23680 of 2001

Date: 06.09.2005

Between:

1) The Chief Staff Officer (P&A), Eastern
Naval Command, Naval Base, Visakhapatnam
& another

…Petitioners

and

1)Industrial Tribunal-cum-Labour Court,
rep. by its Chairman, Visakhapatnam & another

…Respondents